

Appendix I – Sample Sub-Grant Agreement

2008 HOMELAND SECURITY GRANT PROGRAM SUB-GRANT AGREEMENT EDS# C44P- _ - ____

This Sub-grant Agreement, entered into by and between the **Indiana Department of Homeland Security** (the “State”), Sub-grant and _____ (the “Sub-grantee”), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Purpose of this Sub-Grant Agreement.

The purpose of this Sub-grant Agreement is to enable the State to award a Sub-grant of _____ Dollars and _____ Cents (\$XXX,XXX.XX) to the Sub-grantee for eligible costs of the project (the “Project”) or services as described in Exhibits A and B of this Sub-grant Agreement. This sub-grant is from the following Fiscal Year 2008 grant program(s):

[U.S. Department of Homeland Security, Federal Emergency Management Agency, Fiscal Year 2008 Homeland Security Grant Program, Award Number XXX:

[State Homeland Security Program, CFDA 97.073]

[BZPP]

[HMEP]

[BZPP]

The funds shall be used exclusively in accordance with the provisions contained in this Sub-grant Agreement.

2. Term.

This Sub-grant Agreement shall commence on the date it has been signed by all parties and approved as required under Indiana law (the “Effective Date”) and shall remain in effect through _____ (“Expiration Date”).

3. Design and Implementation of Project.

The Sub-grantee shall be solely responsible for the proper design and implementation of the Project as described in Exhibit A, attached hereto and incorporated fully herein. The Sub-grantee agrees to complete the Project in accordance with the plans and specifications contained in its application which is on file with the State and is incorporated by reference. Modification of the Project shall require prior written approval of the State.

4. Monitoring Reviews by the State.

The State may conduct an on-site monitoring review of the Project. Such monitoring review will document the following:

A. Whether Project activities are consistent with those set forth in Exhibit A, the Sub-grant applications, and the terms and conditions of the Sub-grant Agreement.

B. A complete, detailed analysis of actual state, local and/or private funds expended to date on the Project and conformity with the amounts for each budget line item as set forth in

Exhibit B, attached hereto and incorporated herein.

- C. A detailed listing of all Project costs by project budget line item which are accrued yet unpaid, if any.
- D. A written evaluation as to the Sub-grantee's timely progress in project management, financial management and control systems, procurement systems and methods, and performance relative to timely submission of project reports.

5. Payment of Sub-grant Funds by the State.

The payment of this Sub-grant by the State to the Sub-grantee shall be made in accordance with the following schedule and conditions:

- A. This Sub-grant Agreement must be fully signed by all parties and approved as required under Indiana law.
- B. All Sub-grant Agreement conditions must be met to the State's satisfaction.
- C. The State may require evidence furnished by the Sub-grantee that substantial progress has been made toward completion of the Project prior to making the first payment under this Sub-grant. All payments are subject to the State's determination that the Sub-grantee's performance to date conforms with the Project as approved, notwithstanding any other provision of this Sub-grant Agreement.
- D. Unless authorized by statute and previously agreed, all payments will be made in arrears only upon presentation of approved and signed State of Indiana Claim Vouchers. Such Claim Vouchers must be submitted with the budget expenditure report detailing disbursements of state, local and/or private funds by project budget line items.
- E. The Sub-grantee shall submit to the State written progress reports until the completion of the project. These reports shall be submitted on a quarterly basis. These reports must detail progress made toward the completion of the Project described in Exhibit A.
- F. If advance payment of a portion of the sub-grant funds is permitted by statute, and the State agrees to provide such advance payment, it shall be made only upon submission of a proper claim setting out the intended purposes of those funds. After such funds have been expended, Sub-grantee shall provide the State with a reconciliation of those expenditures.
- G. Failure to complete the Project and expend State, federal, local and/or private funds in accordance with this Agreement may be considered a material breach, and shall entitle the State to impose sanctions against the Sub-grantee including, but not limited to, suspension of all Sub-grant payments, and/or suspension of the Sub-grantee's participation in State Sub-grant programs until such time as all material breaches are cured to the State's satisfaction. Sanctions may also include repayment of all State funds expended that are not in the scope of this Project or the Budget.

- H. If this Agreement is terminated by either party prior to the Expiration Date, the State may promptly conduct an onsite monitoring of the Project and complete a Project monitoring report.
- I. All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Sub-grantee in writing unless a specific waiver has been obtained from the Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Sub-grant except as permitted by IC 4-13-2-20.
- J. The Sub-grantee shall be in compliance with all applicable federal and State requirements for any federal or State grant programs administered by the State.
- K. The Sub-grantee shall obligate (which includes, but is not limited to ordering, accepting delivery, installing equipment and full completion of performance of any service agreements or contracts) the funds within six (6) months of the effective date of this Agreement or by _____, whichever is earlier (the "Obligation Deadline"). The Sub-grantee shall liquidate (expend) the funds within ninety (90) days of the Obligation Deadline. The Sub-grantee may request, in writing, and the State may, at its sole discretion, provide written approval allowing the Sub-grantee additional time to obligate or liquidate the funds.
- L. The Sub-grantee shall comply with the requirements in the State's "Grants Management Policies and Procedures Guidebook" ("Guidebook") in effect on the Effective date of this Sub-grant Agreement. The Guidebook is available at: <http://www.in.gov/dhs/2338.htm>.
- M. The Sub-grantee shall comply with all applicable laws, regulations and program guidance applicable to these federal funds. A non-exclusive list of regulations commonly applicable to these funds is as follows:
[Insert specific federal regulations here.]

6. Audits and Maintenance of Records.

- A. The Sub-grantee shall maintain all books, documents, papers, accounting records and other evidence pertaining to this Sub-grant Agreement. The Sub-grantee shall maintain these books, documents, papers, accounting records and other evidence pertaining to this project for a period of at least three (3) years, beginning on the date that the State makes the final payment to the Sub-grantee. Notwithstanding this provision, if the federal regulations governing this grant (44 CFR 13.42) require additional records to be maintained or require the records to be maintained for a longer period of time, the Sub-grantee shall adhere to these federal requirements.
- B. The Sub-grantee shall give the State, the United States Comptroller General and the U.S. Department of Homeland Security, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this Sub-grant Agreement or any Projects funded under this Sub-grant Agreement (including the applicable records maintained by it contractors and sub-grantees) Copies thereof shall be furnished at no cost to the State or United States government representatives if requested.

7. Project Budget and Budget Modification.

- A. The approved Project Budget is set forth as Exhibit A of this Sub-grant Agreement. The Sub-grantee shall not spend more than the amount for each line item, as described in the Budget, without the prior written consent of a duly authorized representative of the State, nor shall the Project costs funded by this Sub-grant Agreement and those funded by the local and/or private share be amended without the prior written consent of the State.
- B. In addition to all other applicable requirements, the Sub-grantee must comply with all applicable requirements in the U.S. Department of Homeland Security guidance document titled "Fiscal Year 2008 Homeland Security Grant Program: Guidance and Application Kit." A copy of this guidance document is available from the following US DHS website: http://www.ojp.usdoj.gov/odp/grants_programs.htm.

Sub-grant funds shall not be used to pay for expenditures otherwise budgeted for with state or local funds.

8. Statutory Authority of Sub-grantee.

The Sub-grantee expressly represents and warrants to the State that it is eligible to receive these monies and it expressly agrees to repay all monies paid to it under this Sub-grant, should a legal determination of its ineligibility be made by the State or U.S. Department of Homeland Security.

9. Use of Sub-grant Funds by Sub-grantee.

The funds received by the Sub-grantee pursuant to this Sub-grant Agreement shall be used only for allowable expenditures under the federal grant to implement the Project or provide the services in conformance with the Budget and for no other purpose. Reimbursement of any expenditure is not a final State decision about the allowability of such cost and is not a waiver of any violation by the Sub-grantee of the terms of this Agreement. If the U.S. DHS or the State determine that any amount paid to the Sub-grantee was for an unallowable expenditure, the Sub-grantee is required to refund the monies for the identified unallowable expenditure.

10. Compliance with Laws.

- A. The Sub-grantee shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Sub-grant Agreement shall be reviewed by the State and the Sub-grantee to determine whether the provisions of this Sub-grant Agreement require formal modification.
- B. The Sub-grantee and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6 *et seq.*, IC § 4-2-7, *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Sub-grantee is not familiar with these ethical requirements, the Sub-grantee should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the Sub-grantee or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Sub-grant Agreement immediately upon notice to the Sub-grantee. In

addition, the Sub-grantee may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable laws.

C. The Sub-grantee certifies by entering into this Sub-grant Agreement that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The Sub-grantee agrees that any payments currently due to the State may be withheld from payments due to the Sub-grantee. Additionally, further work or payments may be withheld, delayed, or denied and/or this Sub-grant Agreement suspended until the Sub-grantee is current in its payments and has submitted proof of such payment to the State.

D. The Sub-grantee warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Sub-grantee agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Sub-grant Agreement.

E. If a valid dispute exists as to the Sub-grantee's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Sub-grantee, the Sub-grantee may request that it be allowed to continue, or receive work, without delay. The Sub-grantee must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC § 5-17-5.

F. The Sub-grantee warrants that the Sub-grantee and its subgrantees, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Sub-grant Agreement and grounds for immediate termination and denial of further work with the State.

G. The Sub-grantee affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

H. As required by IC 5-22-3-7:

(1) the Sub-grantee and any principals of the Sub-grantee certify that (A) the Sub-grantee, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Sub-grantee will not violate the terms of IC 24-4.7 for the duration of the Sub-grant Agreement, even if IC 24-4.7 is preempted by federal law.

(2) The Sub-grantee and any principals of the Sub-grantee certify that an affiliate or principal of the Sub-grantee and any agent acting on behalf of the Sub-grantee or on behalf of an affiliate or principal of the Sub-grantee (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Sub-grant

Agreement, even if IC 24-4.7 is preempted by federal law.

11. Drug-Free Workplace Certification.

The Sub-grantee hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Sub-grantee will give written notice to the State within ten (10) days after receiving actual notice that the Sub-grantee, or an employee of the Sub-grantee in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of Sub-grant payments, termination of the Sub-grant Agreement and/or debarment of Sub-grant opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total Sub-grant Agreement amount set forth in this Sub-grant Agreement is in excess of \$25,000.00, the Sub-grantee hereby further agrees that this Sub-grant Agreement is expressly subject to the terms, conditions and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. No award of a Sub-grant shall be made, and no Sub-grant Agreement, contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Sub-grantee and made a part of the Sub-grant Agreement as part of the Sub-grant documents.

The Sub-grantee certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Sub-grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Sub-grantee's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the Sub-grantee of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

12. Funding Cancellation.

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Sub-grant Agreement, it shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

13. Information Technology Accessibility Standards.

Any information technology related products or services purchased, used or maintained through this Sub-grant Agreement must be compatible with the principles and goals contained in the Electronic and Information Technology Accessibility Standards adopted by the Architectural and Transportation Barriers Compliance Board under Section 508 of the federal Rehabilitation Act of 1973 (29 U.S.C. 794d), as amended. The federal Electronic and Information Technology Accessibility Standards can be found at: <http://www.access-board.gov/508.htm>.

14. Nondiscrimination.

Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Sub-grantee covenants that it shall not discriminate against any employee or applicant for employment relating to this Sub-grant Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, the Sub-grantee certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

The Sub-grantee understands that the State is a recipient of federal funds, and therefore, where applicable, the Sub-grantee and any contractors and subcontractors agree to comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246.

15. Notice to Parties.

Whenever any notice, statement or other communication is required under this Sub-grant Agreement, it shall be sent to the following addresses, unless otherwise specifically advised.

- A. Notices to the State shall be sent to:
(Include contact name and/or title, name of agency, specific address.)
- B. Notices to the Sub-grantee shall be sent to:
(Include contact name and/or title, name of vendor, specific address.)

16. Order of Precedence.

Any inconsistency or ambiguity in this Sub-grant Agreement shall be resolved by giving precedence in the following order: (1) This Sub-grant Agreement, (2) Attachments prepared by the State, (3) Attachments prepared by Sub-grantee; (4) Invitation to Apply for the Sub-grant; and (5) the Sub-grant Application.

17. Renewal.

This Sub-grant Agreement may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed Sub-grant Agreement may not be longer than the term of the original Sub-grant Agreement.

18. Termination for Convenience.

This Agreement may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination shall be effected by delivery to the Sub-grantee of a Termination Notice, specifying the extent to which such termination becomes effective. The Sub-grantee shall be compensated for completion of the Project properly done prior to the effective date of termination. The State will not be liable for work on the Project performed after the effective date of termination. In no case shall total payment made to the Sub-grantee exceed the original grant.

19. Survival

Any expiration or termination of this Sub-grant Agreement shall not affect the ongoing provisions of this Sub-grant Agreement, or the ongoing requirements contained in guidance documents, regulations, or other requirements referenced in this Sub-grant Agreement that will survive the expiration or termination in accordance with their terms.

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Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the Sub-grantee, or that he/she is the properly authorized representative, agent, member or officer of the Sub-grantee, that he/she has not, nor has any other member, employee, representative, agent or officer of the Sub-grantee, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Sub-grant other than that which appears upon the face of this Sub-grant.

In Witness Whereof, the Sub-grantee and the State have, through their duly authorized representatives, entered into this Sub-grant Agreement. The parties, having read and understood the foregoing terms of this Sub-grant Agreement, do by their respective signatures dated below hereby agree to the terms thereof.

Sub-Grantee:

By: _____
Printed Name: _____
Title: _____
Date: _____

By: _____
Printed Name: _____
Title: _____
Date: _____

By: _____
Printed Name: _____
Title: _____
Date: _____

[If this Agreement is with a County, this Agreement must either be signed by at least 2 of the 3 county commissioners or if it is only signed by 1 county commissioner, a copy of the resolution adopted by the board of county commissioners authorizing a single county commissioner to sign this Agreement on behalf of the board of county commissioners must be submitted to the State.]

Certification by Sub-grantee Fiscal Officer: Certification by Sub-grantee Project Director:

By: _____
Printed Name: _____
Title: _____
Date: _____

By: _____
Printed Name: _____
Title: _____
Date: _____

Indiana Department of Homeland Security

By: _____
Joseph E. Wainscott, Jr.
Executive Director
Date: _____

Department of Administration

By: _____ (for)

Carrie Henderson, Commissioner
Date: _____

State Budget Agency

_____(for)
Christopher A. Ruhl, Director
Director
Date: _____

**APPROVED as to Form and Legality:
Office of the Attorney General**

_____(for)
Stephen Carter, Attorney General
Date: _____